IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 847 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI PAVAN KANAIYALAL SHRIVASTVA

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 847 of 2004

MR PM THAKKAR SR. ADVOCATE WITH MR HARESH N JOSHI for Petitioner No. 1-2

MS. MITA PANCHAL APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 24/08/2004

ORAL JUDGEMENT

1. Rule. Ms. Mita Panchal, learned APP appears and waives service of notice of rule on behalf of respondent

- State of Gujarat.

2. By filing this petition under Articles 226 and 227 of the Constitution, the petitioners seek to challenge the order dated 11.8.2004 passed by the learned JMFC, Vadodara granting police remand against the petitioners and also the judgment and order dated 17.8.2004 passed by the learned Additional Sessions Judge (Fast Track Court No.10), Vadodara in Criminal Revision Application No.225 of 2004 by which the order dated 11.8.2004 passed by the learned JMFC, Vadodara granting police remand against the petitioners came to be affirmed.

3. One Kiran Vasantrao Kadam has filed criminal complaint in the Court of learned JMFC, Vadodara against the present petitioners for alleged commission of offences under Sections 420, 425, 426, 441, 442, 447, 463, 464, 465, 468, 470, 471 and 114 of IPC. The said complaint was sent to Vadi Police Station, Vadodara under Section 156 (3) of the Code of Criminal Procedure for investigation. In compliance of the said order, Vadi Police station, Vadodara registered the FIR and it was numbered as M Case No.2/2004 for alleged commission of the offences and pursuant thereto investigation was put into motion. During the course of investigation, the investigating officer has submitted an application seeking police remand of the petitioners for finding out the lock which was put by the petitioners on the disputed property, addresses of the labourers who have put the hoarding on the terrace and to find out the bill of computer. The learned Magistrate after hearing the learned advocates appearing for the parties, granted one day police remand of the petitioners. Aggrieved thereby the petitioners preferred Criminal Revision Application No.225 of 2004 before the learned Additional Sessions Judge (Fast Track Court No.10), Vadodara, which came to be rejected and thereby the learned Additional Sessions Judge confirmed the order passed by the learned JMFC, Vadodara granting one day police remand of the petitioners which has given rise to the present petition.

4. Having considered the submissions advanced by Mr. PM Thakkar, learned Senior Counsel appearing for the petitioners and Ms. Mita Panchal, learned APP for respondent - State and on having perusal of the averments made in the petition as well as the two orders one passed by the learned JMFC, Vadodara granting one day police remand of the petitioners and another order passed by the learned Additional Sessions Judge (Fast Track Court No.10), Vadodara which came to be rejected by confirming

the order of the learned JMFC, Vadodara granting one day police remand of the petitioners, it appears that the learned Magistrate has misdirected himself while passing the order of one day police remand of the petitioners on the ground that the investigating officer wants to recover the lock as well as to find out the addresses of the labourers and the bill of computer as according to this court these are hardly relevant material for police investigation. According to this court, the learned Magistrate has granted police remand in absolutely casual manner which does not stand to the test of scrutiny. Therefore, the said order is deserved to be quashed and set aside.

5. In aforesaid view of the matter, this petition deserves to be allowed by quashing and setting aside both the orders passed by the courts below which are impugned in this petition.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 11.8.2004 passed by the learned JMFC, Vadodara granting one day police remand of the petitioners and the order dated 17.8.2004 passed by the learned Additional Sessions Judge (Fast Track Court No.10), Vadodara in Criminal Revision Application No.225 of 2004 by which the learned Additional Sessions Judge has rejected the said revision application and affirmed the order passed by the learned JMFC, Vadodara granting one day police remand of the petitioners are hereby quashed and set aside. It is expected that the petitioners shall cooperate with the investigation by remaining present as and when they are called for interrogation. Rule is made absolute.

Direct service is permitted.

(A.M. Kapadia, J.)

(karan)